

**Deposition Designations for:  
ALAN C. WHITEHOUSE  
October 18, 2007**

**Deposition Designation Key**

**Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)**

**BNSF = BNSF Railway Co. (Pink)**

**Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)**

**CNA = Continental Cas. Co & Continental Ins. Co. (Red)**

**FFIC = Fireman Funds Ins. Co. (Green)  
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

**GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.**

**Libby = Libby Claimants (Black)**

**OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)**

**PP = Plan Proponents (Blue)**

**Montana = State of Montana (Magenta)**

**Travelers = Travelers Cas. and Surety Cos. (Purple)**

**UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)**

**AFNE = Assume Fact Not in Evidence  
AO = Attorney Objection  
BE = Best Evidence  
Cum. = Cumulative  
Ctr = Counter Designation  
Ctr-Ctr = Counter-Counter  
ET = Expert Testimony  
F = Foundation  
408 = Violation of FRE 408  
H = Hearsay  
IH - Incomplete Hypothetical**

**L = Leading  
LA = Legal Argument  
LC = Legal Conclusion  
LPK - Lacks Personal Knowledge  
LO = Seeking Legal Opinion  
NT = Not Testimony  
Obj: = Objection  
R = Relevance  
S = Speculative  
UP = Unfairly Prejudicial under Rule 403  
V = Vague**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11  
W.R. Grace & CO., et al, Case No. 01-01139 (JFK)  
Debtors.

## VIDEOTAPED DEPOSITION OF ALAN C. WHITEHOUSE, M.D.

Deposition upon oral examination of ALAN C. WHITEHOUSE, M.D., taken at the request of the Debtors, before Osmund D. Miller, a Notary Public, RPR, CCR No. 2280, at the offices of Storey and Miller Court Reporters, 717 West Sprague Avenue, Suite 1520, Spokane, Washington, commencing at or about 9:00 a.m., on October 18, 2007 pursuant to the Federal Rules of Civil Procedure.

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## APPEARANCES

1  
2  
3 FOR THE CLAIMANTS:  
4 MCGARVEY, HEBERLING, SULLIVAN &  
5 MCGARVEY, P.C.  
6 By: Jon L. Heberling  
7 Attorney at Law  
8 745 South Main  
9 Kalispell, Montana  
10  
11 FOR W.R. Grace:  
12 KIRKLAND & ELLIS LLP  
13 By: Barbara Harding  
14 Attorney at Law  
15 655 Fifteenth Street, N.W.  
16 Washington, D.C. 20005  
17 And  
18 Scott A. McMillin  
19 Attorney at Law  
20 200 East Randolph Drive  
21 Chicago, Illinois 60601  
22 And  
23 DORIS MCCHINSKI  
24 FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS:  
25 Arlene Krieger  
26  
27 FOR THE PROPERTY DAMAGE COMMITTEE:  
28 Matt Kramer  
29 FOR THE FUTURE CLAIMANTS REPRESENTATIVE:  
30 Emily Somers  
31  
32 FOR THE U.S. ATTORNEY STATE OF MONTANA:  
33 Kris McLean  
34 FOR THE EPA'S CRIMINAL DIVISION:  
35 Robert Marsden

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THIS IS A CONFIDENTIAL DEPOSITION.

(Ex. Nos. 1 through 4, marked.)

VIDEOGRAPHER: My name is Bonnie Hamada, NCRA Certified Legal Videographer of LVS Productions. I am the videographer in the pending matter. It is Thursday, October 18, 2007. The time is now 9:11 a.m. We are at the office of Storey & Miller, 717 West Sprague Avenue, 15th Floor, Spokane, Washington.

We are here to take the deposition both stenographically and by videotape of Dr. Alan Whitehouse, M.D., filed in the U.S. Bankruptcy Court, District of Delaware, Case Number 01-01139 JFK, entitled, W.R. Grace & Co., et al.

Notice of this videotaped deposition was given by Barbara Harding.

Would Counsel please now voice identify yourself and whom you represent.

MR. HEBERLING: John Heberling for the Libby Claimants.

MS. HARDING: Barbara Harding on behalf of W.R. Grace.

MR. MCMILLIN: Scott McMillin also on behalf of W.R. Grace.

MS. MCCHINSKI: Doris McChinski on behalf of W.R. Grace.

MS. KRIEGER: Arlene Krieger on behalf of the Official Committee of Unsecured Creditors.

MR. KRAMER: Matt Kramer on behalf of the Property Damage

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1 Committee.

2 MS. SOMERS: Emily Somers on behalf of Future Claimants  
3 Representative.

4 MR. MCLEAN: Kris McLean. I am an Assistant United  
5 States Attorney for Montana.

6 MR. MARSDEN: Robert Marsden, I am a special agent with  
7 EPA's criminal division.

8 VIDEOGRAPHER: Present to make the official record of the  
9 proceeding is a Certified Court Reporter, Osmund D. Miller of  
10 Storey and Miller, who will now swear the witness.

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1 A. That was in error.

2 Q. I understand it was in error. But why did you report

3 that in your paper?

4 A. Well --

5 Q. What I mean is, what's the importance of having the same

6 technician throughout the entire process?

7 A. Well, basically, it should have read that the same

8 technician supervised the entire laboratory, with the

9 exception of a couple studies that were done up in Libby. It

10 would have been a more accurate statement in there.

11 I have had one technician that's worked for me for

12 24 years, until I retired, who basically looked after the

13 entire lab and was there every day, and anything that was

14 done by anybody else, she supervised.

15 So, yeah, you are right. That's a misstatement. I am

16 not quite sure how I arrived at that in the process of doing

17 it.

18 On the other hand, I was trying to take care of lots and

19 lots of patients at the same time I am writing a paper like,

20 and that's difficult to do.

21 Q. Were you reviewing the PFT tests at the time you were

22 writing the paper?

23 A. Was I doing what?

24 Q. You had the PFT tests of your patients at the time you

25 were doing the paper, correct?

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1 A. Yes.

2 Q. And the individuals who take the test are written on

3 the --

4 A. Yes.

5 Q. -- on the papers, correct?

6 A. I probably didn't even pay much attention to that as I

7 was doing it.

8 Q. So your testimony is, at the time you were writing the

9 paper, you did not know about all the different technicians

10 that actually administered your PFT tests. Is that right?

11 A. I wasn't paying any attention to it, obviously. I mean,

12 I was well aware that we were getting reliable results. I

13 have run pulmonary function laboratories since 1965, and, so,

14 I am quite well aware of them. We have good studies and bad

15 studies.

16 Q. Are there any other corrections that you need to make to

17 the paper at this point, Dr. Whitehouse?

18 A. None that you don't already know about, people have

19 written about. I haven't made any other corrections, no.

20 Q. There are other misstatements in the paper, correct?

21 A. Any other misstatements in the paper?

22 Q. Yes.

23 A. I don't think there is any misstatements, no.

24 Q. Well, you indicate that you removed patients that had the

25 presence of a significant non-asbestos-related condition such

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1 as sarcoidosis or congestive heart failure. Correct?

2 A. That's not really a misstatement. There is all forms of

3 sarcoid. In fact, many of the people that we have with

4 sarcoid up there are absolute quiescent. It doesn't affect

5 their lung function at all. If congestive heart failure is

6 totally under control, there is no reason why I would remove

7 it, as long as it didn't particularly change during the

8 course of the thing. There is no reason to say that's a

9 misstatement.

10 Q. Even though you didn't remove some patients that had

11 those conditions, correct?

12 A. But I did remove any of the active sarcoids in people

13 that -- people that had bypasses between first and second

14 study, they were removed. Unfortunately, I cannot provide

15 you with the 130 that were removed, because they were removed

16 from that box of charts there, and I don't even know who they

17 are now, at this point, because of that. And they were

18 removed in Libby.

19 Q. There is also an indication that, on Page 220, that

20 patients were either referred by internists and family

21 practitioners or were self-referred?

22 A. That's correct.

23 Q. So, none of your patients in the study were referred by

24 Mr. Heberling?

25 A. I don't think they were. Not in that study. Those

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1 patients were patients that most of whom I had been seeing

2 for quite a while. It's conceivable they did, but they,

3 basically, came on their own volition. They may have talked

4 to a lawyer beforehand. I don't recall that. But they were

5 -- these were people that -- most of the people there were

6 people that I had been seeing for quite a while.

7 Q. You reported in your paper that they were all

8 self-referred. Correct?

9 A. Pretty much they were. Yeah.

10 Q. The patients were either referred by internists and

11 family practitioners or were self-referred. Correct?

12 A. That's true. And if there were people that the lawyers

13 had told us to see, they still came on their own volition.

14 So I still consider that a self-referral. I didn't get

15 referral letters from lawyers sending patients to me at all.

16 Q. This is a document that we originally received from the

17 CARD Clinic in connection with one of the first productions.

18 We can mark that as Exhibit -- wherever we are.

19 (Ex. No. 13, marked.)

20 Q. (BY MS. HARDING) This was in connection with the first

21 production that -- I think the CARD Clinic actually made the

22 redactions on the paper of the medical information.

23 Do you recall the process?

24 A. I recall that they had a scanner up there, and they were

25 redacting charts like mad. And now you are telling me that

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1 Q. For both of the phases of research, how were the patients  
2 to be identified?

3 A. Well, in the pilot study?

4 Q. In the pilot study, right. Well, actually --

5 A. They basically asked me, Aubrey Miller did, how many  
6 cases I had that I thought were environmental cases. This  
7 was very early on, probably even before I knew about all the  
8 exposure pathways and things like that. So I came up with  
9 27 cases for them.

10 Q. This is in 2000, correct?

11 A. In 2000. Right after this whole thing broke. And I sat  
12 down with him, and we got releases from all these people, and  
13 then we sat down in a very large conference and went over the  
14 x-rays with him, and they took -- made copies or we gave them  
15 copies of the x-rays which they took so some of the NIOSH B  
16 readers. And what they did when they went through the whole  
17 thing was that they found a few other exposures like some  
18 family stuff and things like that that I wasn't aware of, and  
19 basically it may have been my naiveté, but there were eight  
20 of them that were clearly purely environmental.

21 Q. Right. So, at the beginning of the study, you provided  
22 them with 27 cases that were environmental, that you believed  
23 to be environmentally exposed individuals that had developed  
24 disease in Libby, correct?

25 A. Correct.

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1 Q. At the end of the process the ATSDR determined out of the  
2 27 only eight were environmentally exposed cases with disease  
3 in Libby, correct?

4 A. That's correct. They had found another pathway that I  
5 didn't know about which was related to work or whatever,  
6 family, or something else.

7 Q. They had found within the exposure histories of the  
8 individuals that you had provided, that they had other  
9 asbestos exposures, correct?

10 A. Yes. Actually what they did, they interviewed all these  
11 people very extensively to find out if there were other  
12 exposure pathways. And there was that I didn't know at the  
13 time.

14 Q. I understood previously this morning you talked about  
15 first seeing environmental, what you believe to be  
16 environmentally exposed people with disease in 1995 or '96, I  
17 think you said. That was when you first saw it. And, so, as  
18 I understand it, between then and --

19 A. Well, I can't really remember when I first, you know,  
20 when my brain said, you know, these are not miners or family  
21 members. It was probably somewhere around there. It may  
22 have been as late as 1998.

23 Q. And then between either '96 or '98 when you first  
24 believed that you saw that, and around 2000, is when you  
25 believed you had discovered about 27 cases. Correct?

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1 A. That's right.

2 Q. And you don't disagree with the ATSDR's reclassification  
3 of the from 27 to eight of the environmental exposures,  
4 correct?

5 A. I have to go back over them again. But I wasn't arguing  
6 with them about them particularly at all, no. I just  
7 accepted what they said at the time.

8 Q. And you were listed as a collaborator and were involved  
9 in the creation of the posters that were created by the  
10 ATSDR?

11 A. Yes.

12 Q. Do you recall those?

13 A. I still have that. The only problem, it covered half  
14 this wall. Here you go.

15 Q. I have a couple questions that I would like to ask you  
16 relating to autopsies. Typically, why are autopsies  
17 performed in medical cases or when people die?

18 A. That's a really good question, because most physicians in  
19 the general practice of internal medicine or chest disease,  
20 we don't even ask for autopsies because we know what they  
21 died of. We know more than the pathologist can tell us for  
22 the most part. And I really sincerely mean that. We've  
23 looked at them and have all the physiologic things, and also  
24 autopsies aren't needed. So autopsies generally don't help  
25 us very much with a cause of death.

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1 We have -- I don't know, you may have some specific  
2 questions concerning asbestos and go ahead and shoot on  
3 those.

4 Q. I have a -- they can help you identify what kind of  
5 disease somebody really had, correct?

6 A. They can. In the case of asbestos diseases, the ability  
7 to spot asbestos bodies is very patchy, and particularly in  
8 pleural disease you normally don't see them. And in many of  
9 the cases that have severe interstitial disease you don't  
10 even see asbestos bodies. And there are a lot of factors  
11 related to things that are being digested and coughed out,  
12 and particularly with chrysotile. So, it is spotty and it's  
13 not a reliable evidence of -- that the disease was for or not  
14 -- well, it is for disease probably, but not against -- not  
15 saying that they didn't have it. And not only that, but you  
16 can get asbestos bodies in normal people.

17 Q. Well, as I understand your answer, you are talking about  
18 kind of attribution of disease that is seen to asbestos.  
19 That was your answer?

20 A. I figured that's where you were headed.

21 Q. Actually, the question that I was trying to get at is  
22 just in determining what disease an individual actually has,  
23 autopsies can be very useful, correct?

24 MR. HEBERLING: Objection, answered.

25 THE WITNESS: There are times when it's very useful and

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